

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

2010 MAR 17 P 3:45

WILLIAMS MULLEN)	Civil Action No.	CLERK US DISTRICT COURT ALEXANDRIA, VIRGINIA
Plaintiff,)	1:10cv 262	
v.)	(JCC/TCB)	
UNITED STATES ARMY)		
CRIMINAL INVESTIGATION)		
COMMAND)		
Defendants.)		

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

Plaintiff, Williams Mullen, hereby files this Complaint to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (FOIA) and to enjoin Defendant from withholding from disclosure certain records of the United States Army Criminal Investigation Command (USACIDC) within its possession and control. As grounds therefor, Williams Mullen alleges as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

PARTIES

3. Williams Mullen is a law firm with offices throughout Virginia, including Tysons Corner, Norfolk, Newport News, and Richmond. Williams Mullen represented Michael J. Hopmeier and Unconventional Concepts, Inc. (UCI) in the FOIA request at issue in this Complaint. This firm, Remenick PLLC, represents Mr. Hopmeier and UCI in the matter before this Court.

4. Defendant United States Army Criminal Investigation Command (USACIDC) is an agency of the United States government. USACIDC has its principal place of business in Fort Belvoir, Virginia. USACIDC is in possession, custody and control over records to which Williams Mullen seeks access.

STATEMENT OF FACTS

Williams Mullen's July 2007 FOIA Request

5. On July 31, 2007, Williams Mullen sent to the USACIDC a FOIA request seeking access to any and all records concerning or relating to Unconventional Concepts, Inc. (UCI) and Michael J. Hopmeier. A copy of Williams Mullen's FOIA request is attached hereto as Exhibit 1 and is incorporated herein by reference.

6. On August 14, 2007, USACIDC requested a Privacy Act waiver for the requested documents.

7. On September 4, 2007, Williams Mullen submitted to the USACIDC a waiver and release from Michael J. Hopmeier. A copy of the waiver and release is attached hereto as Exhibit 2 and is incorporated herein by reference.

8. On October 16, 2007, USACIDC denied the FOIA request under (j)(2) of the Privacy Act and FOIA exemptions (b)(7)(A), (b)(2), (b)(6), and (b)(7)(C) as an investigation against Mr. Hopmeier and UCI was still ongoing. A copy of the form denial is attached hereto as Exhibit 3 and is incorporated herein by reference.

United States Department of Justice Completes the Investigation

9. By letter dated July 7, 2009, the United States Department of Justice informed Mr. Hopmeier's personal attorney, Mr. Mead, that it had "*completed [its] investigation of allegations that Unconventional Concepts, Inc. ("UCI"), Michael Hopmeier, and others violated federal criminal law in securing and completing a number of contracts and cooperative agreements with the United States.*" A copy of the letter from the Department of Justice is attached hereto as Exhibit 4 and is incorporated herein by reference.

Williams Mullen's August 31 FOIA Resubmission

10. On August 31, 2009, Williams Mullen resubmitted its FOIA request to the Defendant, explaining that the investigation against Mr. Hopmeier and UCI was closed. A copy of the resubmission letter is attached hereto as Exhibit 5 and is incorporated herein by reference.

11. The FOIA request was denied on September 29, 2009. Even though the investigation against Mr. Hopmeier and UCI was over, the stated basis for the denial was the same as in the form denial of October 16, 2007, namely that "*an active investigation is in progress with an undetermined completion date.*" A copy of the denial is attached hereto as Exhibit 6 and is incorporated herein by reference.

12. On October 15, 2009, Williams Mullen appealed the denial of its FOIA request.

13. On December 31, 2009, the United States Government entered into a Settlement Agreement with Mr. Hopmeier and UCI before the Armed Services Board of Contract Appeals. The Settlement Agreement related to issues directly associated with the investigation by the USACDC and DOJ. The Settlement Agreements states that the allegations against Mr. Hopmeier and UCI had "*no basis in fact*" and that "*the Department of Justice has completed its investigation without initiating any prosecutions.*" The Government further stated that "*the Contracting Officer has not received from the Department of Justice any evidence of wrongdoing by the Contractor, including conspiracy with others.*" A copy of the Settlement Agreement is attached hereto as Exhibit 7 and is incorporated herein by reference.

14. On January 8, 2010, the Department of the Army Office of the General Counsel denied the appeal. The denial was again based on an allegation that the investigation against Mr. Hopmeier and UCI is still open, stating that "*USACIDC has informed our office that it is still engaged in an ongoing, joint investigation with several other law enforcement agencies.*" A copy of the denial is attached hereto as Exhibit 8 and is incorporated herein by reference.

15. On January 26, 2010, Williams Mullen responded to the appeal denial with a letter attaching the July 7, 2009 letter from the Department of Justice and the December 31, 2009 Settlement Agreement, both stating that investigation of Mr. Hopmeier and UCI was over. A

copy of the January 26, 2010 letter is attached hereto as Exhibit 9. Williams Mullen has not received any response.

COUNT 1
(Violation of FOIA)

16. Plaintiff realleges paragraphs 1 through 15 as if fully stated herein.
17. Plaintiff has a statutory right to the records that it seeks. There is no basis for further delay and Plaintiff seeks expedited production of the documents and materials in compliance with the Freedom of Information Act, 5 U.S.C. § 552.

WHEREFORE, Plaintiff respectfully requests that the Court:

- (1) declare Defendant's failure to comply with FOIA to be unlawful;
- (2) enjoin Defendant from continuing to withhold records responsive to Plaintiff's July 31, 2007 and August 31, 2009 FOIA requests and order Defendant to produce all responsive records improperly withheld from Plaintiff without further delay or charge;
- (3) award Plaintiff attorneys fees and other litigation costs reasonably incurred in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (4) grant such other relief as the Court deems just and proper.

Dated March 17, 2010

Respectfully submitted,
REMNICK PLLC



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